

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SCOTT FIELDS

v.

CITY OF SHERMAN, TEXAS, ET AL.

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Civil Action No. 4:18-CV-821

(Judge Mazzant/Judge Nowak)

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On September 28, 2020, the report of the Magistrate Judge (Dkt. #94) was entered containing proposed findings of fact and recommendations that Plaintiff's Motion for Time Extension to File Notice of Appeal (Dkt. #92) be denied. Having received the report of the Magistrate Judge, having considered Plaintiff's Objections (Dkt. #96), and having conducted a de novo review, the Court is of the opinion that the Magistrate Judge's report should be adopted.

On March 13, 2020, a Final Judgment disposing of Plaintiff's claims was entered (Dkt. #88). Defendant should have filed his notice of appeal by April 13, 2020. On April 27, 2020, Plaintiff moved for an extension of time to file his notice of appeal (Dkt. #92). The Magistrate Judge recommended the Court deny the request due to Plaintiff's failure to establish excusable neglect in missing the deadline to file an appeal (Dkt. #94 at p. 4). Plaintiff objects to the recommendation, in pertinent part, as follows:

[T]he attending magistrate has failed, balked or refused to address essence of his motion for time extension to file a notice of appeal; on other grounds that he has simply filed motion for time extension because waste of judicial resources seems looming; on other grounds that lack of certified mailing expressly suggests that moot of municipal court cause is imminent and would yield him not even needing appeal here; and on general grounds that he has only balked to file notice of appeal because he has no idea if he will even need appeal here.

Additionally, Plaintiff objects to magistrate report on grounds that this Sherman federal court should delay this time extension procedure here until Sherman municipal cause terminated or until he knows whether or not he even need an appeal.

(Dkt. #95 at pp. 11-12).

OBJECTIONS TO REPORT AND RECOMMENDATION

A party who files timely written objections to a magistrate judge's report and recommendation is entitled to a de novo review of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2)-(3).

The United States Court of Appeals for the Fifth Circuit requires a timely notice of appeal before exercising jurisdiction. *United States v. Winn*, 948 F.2d 145, 153 (5th Cir. 1991). Plaintiff objects that "the attending magistrate has failed, balked or refused to address essence of his motion for time extension to file a notice of appeal" (Dkt. #96 at p. 11). This statement does not shed light on Plaintiff's specific or substantive objection(s) to the Magistrate Judge's report and recommendation as required under 28 U.S.C. § 636(b)(1)(C). Nor do Plaintiff's objections demonstrate excusable neglect; rather, Plaintiff's filing predominantly urges the merits of his underlying claims or "sounds off" about various ways Plaintiff believes he has been wronged (Dkt. #96). In support of his statement that the Magistrate Judge refused to properly address his Motion, he merely states the Court should extend the time for appeal "until [the] Sherman municipal cause [is] terminated or until [Plaintiff] knows whether or not he even need[s] an appeal" (Dkt. #96 at p. 12). "Frivolous, conclusive or general objections need not be considered by the district court." *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982), *overruled on other grounds by Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996). Moreover, Plaintiff provides no authority for his request to delay the time period for appeal in this matter

pending the outcome of an ongoing municipal state court case, or that the existence of the ongoing municipal matter somehow factors into the analysis regarding excusable neglect. *See* FED. R. CIV. P. 77 (d)(2); FED. R. APP. P. 4. Plaintiff's objections are overruled.

CONCLUSION

Having considered Plaintiff's Objections (Dkt. #96), all other relevant filings, and having conducted a de novo review, the Court adopts the Magistrate Judge's Report and Recommendation (Dkt. #94) as the findings and conclusions of the Court.

It is therefore **ORDERED** that Plaintiff's Motion for Time Extension to File Notice of Appeal (Dkt. #92) is **DENIED**.

All relief not previously granted is hereby **DENIED**.

IT IS SO ORDERED.

SIGNED this 17th day of December, 2020.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE